

These are the minutes of the regular meeting of the Texas Transportation Commission, which was held on October 27, 2005, in Corpus Christi, Texas. The meeting opened at 9:24 a.m. with the following commissioners present:

Texas Transportation Commission:

Ric Williamson	Chair
John Johnson	Commissioner
Hope Andrade	Commissioner
Ted Houghton, Jr.	Commissioner

Administrative Staff:

Michael W. Behrens, Executive Director
Steve Simmons, Deputy Executive Director
Richard Monroe, General Counsel
Roger Polson, Executive Assistant to the Deputy Executive Director

Registration sheets listing others in attendance are on file with the Texas Department of Transportation's Chief Minute Clerk.

A public notice of this meeting containing all items on the proposed agenda was filed in the Office of the Secretary of State at 1:55 p.m. on October 19, 2005, as required by Chapter 551, of the Government Code, referred to as "The Open Meetings Act."

Receive comments from area public officials, community and civic leaders, and private citizens. Report by the Corpus Christi District.

The commission received comments from state representative Vilma Luna, Abel Herrera and Gene Seaman.

The commission received comments from Corpus Christi District Engineer Craig Clark, Chairman of the Corpus Christi Metropolitan Planning Organization Ruben Bonilla, Port Authority Commissioner Judy Hawley, Corpus Christi City Manager Skip Noe, and Aransas County Judge Glenn Guillory.

ITEM 1. Approval of Minutes of the September 29, 2005, regular meeting of the Texas Transportation Commission

Commissioner Houghton made a motion, seconded by Commissioner Andrade, and the commission approved the minutes of the September 29, 2005, regular meeting of the Texas Transportation Commission.

ITEM 2. PUBLIC TRANSPORTATION**El Paso County - Award Rural Transportation Assistance Program funds to El Paso County**

Commissioner Houghton made a motion, seconded by Commissioner Andrade and the commission approved the following minute order presented by Public Transportation Division Director Eric Gleason:

110258
PTN

The Texas Transportation Commission (commission) awards \$145,000 of 49 U.S.C. §5311 (b)(2) Rural Transit Assistance Program funds to El Paso County in support of the Intelligent Transportation Systems service integration project.

The commission takes special note of its designation by the governor as the administering agency for the Federal Transit Administration (FTA) grant program, in a letter dated June 13, 2002; and further acknowledges that federal program regulations require the Texas Department of Transportation (department) to ensure that these grant funds are distributed fairly and equitably within the state.

Transportation Code, Chapter 455 assigns a broad spectrum of public transportation roles and missions to the department.

Transportation Code, Chapter 456 authorizes the commission to administer funds appropriated for public transportation.

IT IS THEREFORE ORDERED by the commission that the executive director or the director's designee is authorized to submit the necessary state application to the FTA, and enter into the necessary contracts with El Paso County upon completion of all application requirements.

ITEM 3. DISCUSSION ITEM**Discussion on various Vehicle Title and Registration public outreach and marketing efforts**

This item was presented by Vehicle Titles and Registration Interim Division Director Mike Craig.

ITEM 4. Promulgation of Administrative Rules

a. **Proposed Adoption** Under Title 43, Texas Administrative Code, and the Administrative Procedure Act, Government Code, Chapter 2001:

(to be published in the Texas Register for public comment)

(1) Chapter 17 – Vehicle Titles and Registration

Amendments to §§17.2-17.3, concerning Motor Vehicle Certificates of Title, §§17.21-17.24, §17.28, §17.30, §17.33, and §17.36, concerning Motor Vehicle Registration, §17.54, concerning Automated Equipment, (Registration and Title System), §17.61, §17.62, §17.65, and §17.68, concerning Nonrepairable and Salvage Motor Vehicles, and §17.72, §17.73 and §17.79, concerning Salvage Vehicle Dealers

Commissioner Johnson made a motion, seconded by Commissioner Houghton and the commission approved the following minute order presented by Vehicle Titles and Registration Interim Division Director Mike Craig:

110259
propose
VTR

The Texas Transportation Commission (commission) finds it necessary to amendments to §17.2 and §17.3, §§17.21 – 17.24, §17.28, §17.30, §17.33, §17.36, §17.54, §17.61, §17.62, §17.65, §17.68, §17.72, §17.73 and §17.79, relating to vehicle titles and registration, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A - F, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments to §17.2 and §17.3, §§17.21 – 17.24, §17.28, §17.30, §17.33, §17.36, §17.54, §17.61, §17.62, §17.65, §17.68, §17.72, §17.73 and §17.79 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A through F on file with minute order clerk.

(2) Chapter 21 – Right of Way

New Subchapter N, Rail Facilities, New §21.801, Acquisition of Real Property, and New §21.802, Disposal of Real Property (relating to rail facilities)

Commissioner Johnson made a motion, seconded by Commissioner Houghton and the commission approved the following minute order presented by Right of Way Division Director John Campbell:

110260
propose
ROW

The Texas Transportation Commission (commission) finds it necessary to new §21.801 and §21.802, relating to acquisition and disposal of real property for rail facilities, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed new sections, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that new §21.801 and §21.802 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A and B on file with minute order clerk.

(3) Chapter 23 – Travel Information**New §23.13, Links to Community Web Sites from Rest Areas and Travel Information Centers (Travel Information)**

Commissioner Houghton made a motion, seconded by Commissioner Johnson and the commission approved the following minute order presented by Travel Division Director Doris Howdeshell:

110261
propose
TRV

The Texas Transportation Commission (commission) finds it necessary to new §23.13, relating to links to community web sites from rest areas and travel information centers, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed new section, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the new §23.13 is proposed for adoption and is authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A and B on file with minute order clerk.

(4) Chapter 28 – Oversize and Overweight Vehicles and Loads**Amendments to §28.11, General Oversize and Overweight Permit Requirements and Procedures (General Permits), §28.14, Manufactured Housing, and Industrialized Housing and Building Permits, §28.15, Portable Building Unit Permits (Highway Crossings by Oversize and Overweight Vehicles and Loads) and §28.92, Permit Issuance Requirements and Procedures (Port of Brownsville Port Authority Permits), New Subchapter H, Chambers County Permits, New §§28.100-28.102, Purpose**

Commissioner Johnson made a motion, seconded by Commissioner Houghton and the commission approved the following minute order presented by Motor Carrier Division Director Carol Davis:

110262
propose
MCD

The Texas Transportation Commission (commission) finds it necessary to amendments to §28.11, §28.14, §28.15, and §28.92, and new §§28.100 – 28.102, relating to oversize and overweight vehicles and loads, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments and new sections, attached to this minute order as Exhibits A - D, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments and new sections are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A through D on file with minute order clerk.

b. Final Adoption Under Title 43, Texas Administrative Code, and the Administrative Procedure Act, Government Code, Chapter 2001:

(1) Chapter 7 - Rail Facilities

Chapter 7 - Rail Facilities; Subchapter B, Contracts, New §7.11, Comprehensive Development Agreements

Commissioner Houghton made a motion, seconded by Commissioner Johnson and the commission approved the following minute order presented by Texas Turnpike Authority Director of Turnpike Planning and Development Doug Woodall:

110263
TTA

The Texas Transportation Commission (commission) finds it necessary to adopt new §7.11, relating to comprehensive development agreements for rail facilities or systems, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted new section, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that new §7.11 is adopted and is authorized for filing with the Office of the Secretary of State.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A and B on file with minute order clerk.

(2) Chapter 15 - Transportation Planning and Programming
Amendments to §15.4, Unified Planning Work Program

Commissioner Houghton made a motion, seconded by Commissioner Johnson and the commission approved the following minute order presented by Transportation Planning and Programming Division Director Jim Randall:

110264
TPP

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §15.4, relating to the Unified Planning Work Program, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments to §15.4 are adopted and are authorized for filing with the Office of the Secretary of State.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A and B on file with minute order clerk.

(3) Chapter 25 - Traffic Operations (MO)

Repeal of §§25.400-25.409, Subchapter G, Specific Information Logo Sign Program and New §§25.400-25.409, Subchapter G, Information Logo Sign and Tourist-Oriented Directional (TOD) Program, and Repeal of §§25.700-25.708, Subchapter K, Major Agricultural Interest Sign Program

Commissioner Houghton made a motion, seconded by Commissioner Andrade and the commission approved the following minute order presented by Traffic Operations Division Director Carlos Lopez:

110265
TRF

The Texas Transportation Commission (commission) finds it necessary to adopt the repeal of §§25.400 – 25.409 and simultaneously adopt new §§25.400 – 25.409, relating to the information logo sign and tourist-oriented directional sign program, and also adopt the repeal of §§25.700 – 25.708, relating to the major agricultural interest sign program, to be codified under Title 43, Texas Administrative Code, Part 1.

The preambles and the adopted repeals and new sections, attached to this minute order as Exhibits A - E, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the repeals of §§25.400 – 25.409 and §§25.700 – 25.708 and new §§25.400 – 25.409 are adopted and are authorized for filing with the Office of the Secretary of State.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A through E on file with minute order clerk.

ITEM 5. TRANSPORTATION PLANNING

a. Approve the 2006 Statewide Mobility Program

Commissioner Johnson made a motion, seconded by Commissioner Houghton and the commission approved the following minute order presented by Transportation Planning and Programming Division Director Jim Randall:

110266
TPP

The UNIFIED TRANSPORTATION PROGRAM (UTP) of the Texas Department of Transportation (department) is a 10-year plan that authorizes project planning and development, and is submitted to the Texas Transportation Commission (commission) for approval on an annual basis.

To align the UTP with the simplified budget strategies outlined in the 2005-2009 Strategic Plan, the department has divided the UTP into two documents: The Statewide Mobility Program (SMP) and the Statewide Preservation Program (SPP). The SMP is part of the Build It budget strategy and contains all of the department's categories which enhance the transportation system.

Transportation Code, §201.103 requires the commission to plan and make policies for the location, construction, and maintenance of a comprehensive system of state highways and public roads.

Transportation Code, §203.002 requires the commission to lay out, construct, maintain, and operate a modern state highway system, with emphasis on the construction of controlled access highways, and to plan for future highways.

Pursuant to Transportation Code, §201.602, the department conducted a public hearing on December 16, 2004, to receive testimony concerning the highway project selection process and the relative importance of the various criteria which the commission uses for project selection decisions. Minute Order 109974, dated February 24, 2005, approved the project selection process. There were no oral comments at the public hearing or written comments received.

Pursuant to Transportation Code, §21.108, the commission, with the advice of the Aviation Advisory Committee, prepares a multiyear aviation facilities capital improvement program. Exhibit H contains project information from the 2006-2008 Aviation Capital Improvement Program, as recommended by the Aviation Advisory Committee at its August 4, 2005 meeting and is being simultaneously approved with the 2006 SMP.

Exhibit I, Public Transportation contains information on transit programs. Actual transit program allocations and grant recipients will be approved by future minute orders.

IT IS THEREFORE ORDERED by the commission that the 2006 SMP as shown in the following exhibits is hereby approved. It is understood that all previously approved projects with CONSTRUCT authority will retain this authority in the 2006 SMP.

- | | |
|-----------|---|
| Exhibit A | Highway Construction Funding Policy and Restrictions |
| Exhibit B | Allocation Program Amounts for Category 5 - Congestion Mitigation and Air Quality Improvement, Category 7 - Metropolitan Mobility/Rehabilitation, Category 9 - Safety Rest Area Program, Category 10 - Supplemental Transportation Projects, Category 11 - District Discretionary |
| Exhibit C | Category 2 - Metropolitan Area Corridor Projects |
| Exhibit D | Category 3 - Urban Area Corridor Projects |
| Exhibit E | Category 4 - Statewide Connectivity Corridor Projects |

Exhibit F Category 10 - Supplemental Transportation Projects – Congressional High Priority Projects
 Exhibit G Category 12 - Strategic Priority
 Exhibit H Aviation Capital Improvement Program
 Exhibit I Public Transportation

IT IS FURTHER ORDERED that:

1. The executive director is hereby authorized to develop the projects listed in the exhibits to the level of authority indicated for each project to include any necessary agreements, right of way acquisitions, utility adjustments, and relocation assistance, subject to the policies of the department and all applicable federal and state laws governing the acquisition of real property.
2. Pursuant to Transportation Code, §222.052, the commission may accept financial contributions from political subdivisions of the state for development of projects in the 2006 SMP.
3. The 2006-2008 Aviation Capital Improvement Program, as recommended by the Aviation Advisory Committee at its August 4, 2005, meeting is being simultaneously approved with the 2006 SMP. The executive director is hereby authorized to proceed with the development of these projects to include any necessary agreements.

b. Approve the Texas Rail System Plan

Commissioner Houghton made a motion, seconded by Commissioner Andrade and the commission approved the following minute order presented by Transportation Planning and Programming Division Director Jim Randall:

110267
 TPP

Title 23, United States Code, Section 135 requires each state to carry out a continuing, cooperative and comprehensive intermodal statewide transportation planning process, including the development of a statewide transportation plan that facilitates the efficient, economic movement of people and goods in all areas of the state.

Pursuant to Transportation Code, Section 201.601, the Texas Department of Transportation (department) is responsible for providing statewide transportation planning across all modes of transportation.

House Bill 3588, 78th Texas Legislature, Regular Session, 2003 and House Bill 2702, 79th Texas Legislature, Regular Session, 2005, broadened the department's responsibilities concerning rail facilities.

By letter dated August 31, 2005, addressed to the Federal Railroad Administration, Governor Rick Perry designated the department as the agency that will administer and coordinate Texas' participation in rail planning activities and responsibilities as required by federal regulations under Title 49, United States Code §22102 and Title 49, Code of Federal Regulations §266.15.

Due to these increased responsibilities and in accordance with 49 CFR 266.15, the department has developed the 2005 Texas Rail System Plan (plan). The plan identifies rail improvements that could enhance the movement of people and goods around the state. The plan also outlines policies and programs to encourage the continued successful operation of freight and passenger rail transportation modes in Texas.

On September 23, 2005, the department conducted a public hearing to receive testimony on the plan. Written comments were received through October 10, 2005. A summary of all written and oral comments and the department's responses are shown in Exhibit A.

The 2005 Texas Rail System Plan Summary is shown in Exhibit B and the 2005 Texas Rail System Plan that was prepared in accordance with 49 CFR 266.15 is shown in Exhibit C.

The Texas Transportation Commission (commission) finds that the plan is in keeping with the department's mission to provide for the safe, effective and efficient movement of people and goods and has focused the plan's objectives on reliable mobility, improved safety, system preservation and economic vitality.

IT IS THEREFORE ORDERED that the commission accepts the plan and its summary as shown in Exhibits B and C.

IT IS FURTHER ORDERED that the executive director submit the 2005 Texas Rail System Plan as the State Rail Plan to the Federal Railroad Administration through the appropriate Federal Highway Division Office.

Note: Exhibit A on file with minute order clerk.

c. Various Counties - Application for approval to deviate from the terms of the railroad clearance statutes for the following companies:

1. Synsil Product, Inc.
2. Cemex, Inc.
3. Prime Rail Interest, Inc.
4. ConocoPhillips Sweeny Refinery
5. Rohm and Haas Company Bayport Plant

Commissioner Houghton made a motion, seconded by Commissioner Johnson and the commission approved the following minute order presented by Transportation Planning and Programming Division Director Jim Randall:

110268
TPP

Pursuant to Section 1.09 of House Bill 2702, 79th Legislative Session, 2005, all powers and duties of the Texas Railroad Commission related to railroads and the regulation of railroads were transferred to the Texas Department of Transportation (department), effective October 1, 2005. The transfer included all then-pending applications filed with the Railroad Commission.

The Texas Transportation Commission is authorized to consider and approve the applications pursuant to Texas Civil Statutes, Article 6559f.

Five applications concerning railroad safety were filed with the Railroad Commission and are now pending before the department. Each applicant requests a deviation from requirements specifying the minimum clearance between railroad tracks and structures. A summary of the applicant information and the requested railroad clearance deviation is shown in Exhibit A. Applicants have provided information such as plans, site descriptions and photographs to describe the obstructions and their relative location to existing and proposed rail facilities.

All plans and sites were inspected and reviewed by department rail safety inspectors. All requests for railroad clearance deviations are recommended for approval with qualifying conditions such as illuminated signage near structures, warning of close clearance conditions and requirements to notify servicing railroads of close clearance conditions. The approval of these applications will allow for a greater use of these rail facilities.

IT IS THEREFORE ORDERED that the applications listed in this order are approved. The Executive Director or his designee is authorized to approve the variances in this order and to require appropriate measures to ensure the safety of equipment and people where the variances are granted.

Note: Exhibit A on file with minute order clerk.

ITEM 6. TOLL PROJECT

a. **Bexar County-** Consider final approval of a request for financing from the Alamo Regional Mobility Authority to pay certain engineering, legal and financial planning costs to study and analyze competing proposals submitted for the proposed Loop 1604 and US 281 turnpike project and its impacts on other potential elements of a proposed toll system in Bexar County

The commission heard comments from Alamo RMA chairman Bill Thornton.

Commissioner Andrade made a motion, seconded by Commissioner Houghton and the commission approved the following minute order presented by Texas Turnpike Authority Division Director of Turnpike Planning and Development Doug Woodall:

110269
TTA

In Minute Order 109523, dated December 18, 2003, the Texas Transportation Commission (commission) authorized the creation of the Alamo Regional Mobility Authority (authority), formerly known as the Bexar County Regional Mobility Authority, with the boundaries of the authority to be the entire geographic area of Bexar County, Texas.

The Texas Department of Transportation (department) and the authority have worked together to identify an approach to provide for the funding and development of certain transportation system improvements within the jurisdictional limits of the authority.

Transportation Code, §370.301 authorizes the department to provide for or contribute to the payment of costs of the design, financing, construction, operation, or maintenance of a turnpike project of a regional mobility authority (RMA) on terms agreed to by the department and the RMA. Transportation Code, §222.103 authorizes the department to participate, by spending money from any available source, in the acquisition, construction, maintenance, or operation of a toll facility of a public or private entity on terms and conditions established by the commission.

Pursuant to Transportation Code, §222.103, the commission adopted Title 43, Texas Administrative Code, §27.50-27.58 (toll equity rules) to prescribe conditions for the commission's financing of a toll facility of a public or private entity.

On April 28, 2005, the department received an unsolicited concession proposal from a consortium led by Zachry American Infrastructure and Cintra Concesiones de Infraestructuras de Transporte (Zachry American/Cintra) proposing private development, operation, maintenance, and financing of a significant portion of the toll road network proposed in the San Antonio area. After review by the department, the commission, in Minute Order 110112, authorized issuance of a request for competing proposals and qualifications (RFPQ). That request was issued on July 29, 2005.

In accordance with Sections 27.53 and 27.54(a) of the toll equity rules, the commission, in Minute Order 110233, granted preliminary approval of financial assistance in the amount of \$1 million to pay for authority staff participation in the review and evaluation of competing proposals submitted in response to procurement documents, and in the development of the comprehensive development agreement (CDA) for the project. The financial assistance would also be used to allow the authority to obtain independent engineering, financial and legal consulting assistance in the development of project development and financing terms proposed by the authority for inclusion in the request for detailed proposals (RFDP) or the CDA.

Under Transportation Code, §223.204, all or part of a proposal submitted by a private entity for a CDA, supplemental information or material submitted by the private entity in connection with a proposal for a CDA, and information created or collected by the department or its agent during consideration of a proposal for a CDA is confidential and is not subject to disclosure.

Pursuant to Transportation Code, §223.204, all department and authority staff and consultants involved in the procurement and evaluation process for the project will be required to agree to maintain the confidentiality of all proposer evaluation and selection related information they obtain access to during the course of working on the project.

In accordance with Section 27.54 of the toll equity rules, the executive director has negotiated a financial assistance agreement with the authority that complies with the requirements of Section 27.55 of those rules, including provisions for the repayment of the financial assistance if the project is ultimately transferred to the authority, the authority otherwise obtains a right to share in project revenue, or if authority staff or consultants release confidential information in contravention of Transportation Code,

§223.204 and the confidentiality agreement. The authority has complied with all other applicable requirements of Section 27.54.

As the financial assistance will be used to pay for the involvement of the authority in the CDA procurement process, which should lead to the development of a needed project that will improve safety and mobility by adding capacity to an existing corridor that carries traffic volumes that exceed the efficient carrying capacity of a facility of its configuration, and the executive director has negotiated provisions relating to the disbursement and repayment of the financial assistance, the commission has determined that providing financial assistance will prudently provide for the protection of public funds.

As the department previously conducted or will conduct the necessary environmental studies and analyses of the proposed project, and any resulting CDA will require the consideration of the environmental consequences of the proposed project, compliance with all applicable environmental laws, regulations, and requirements, and implementation of all environmental permits, issues, and commitments, the commission has determined that the project will provide for all reasonable and feasible measures to avoid, minimize, or mitigate adverse environmental impacts.

NOW, THEREFORE, IT IS DETERMINED that the request for financial assistance submitted by the Alamo Regional Mobility Authority meets the requirements of 43 TAC §27.54(c) and, in accordance with that provision, the commission grants final approval of the request for financing in the amount of \$1 million, and authorizes and directs the executive director to enter into a financial assistance agreement with the authority.

IT IS FURTHER ORDERED that the financial assistance shall be repaid by the authority if the project is ultimately transferred to the authority, the authority otherwise obtains a right to share in project revenue, or if authority staff or consultants release confidential information in contravention of Transportation Code, §223.204 and the confidentiality agreement. This order does not constitute approval of the transfer of the project as required by 43 TAC §26.43 nor does it commit the commission to any financial assistance in addition to that described in this order.

b. Bexar County - Authorize the executive director to negotiate and develop an agreement with the Alamo Regional Mobility Authority (AlamoRMA) for the planning, financing, and potential design, construction, operation, and maintenance of managed or tolled lanes on I-35 from the Bexar/Guadalupe County line to the San Antonio Central Business District, managed or tolled lanes on SH 16 west from Interstate Loop 410 to Loop 1604 northwest, and the tolled interchange at US 281 and Wurzbach Parkway, including the license or lease of state-owned right of way to the AlamoRMA for the purpose of developing these potential AlamoRMA turnpike projects

Commissioner Andrade made a motion, seconded by Commissioner Houghton and the commission approved the following minute order presented by Texas Turnpike Authority Division Director of Turnpike Planning and Development Doug Woodall:

110270
TTA

In Minute Order 109523, dated December 18, 2003, the Texas Transportation Commission (commission) authorized the creation of the Alamo Regional Mobility Authority (AlamoRMA), formerly known as the Bexar County Regional Mobility Authority, with the boundaries of the authority to be the entire geographic area of Bexar County, Texas.

The Texas Department of Transportation (department) and the AlamoRMA have worked together to identify an approach to provide for the funding and development of certain transportation system improvements within the jurisdictional limits of the AlamoRMA.

The Metropolitan Transportation Plan of the San Antonio-Bexar County Metropolitan Planning Organization and the Statewide Mobility Plan identify several projects within the jurisdictional limits of the AlamoRMA to be developed as toll projects, including I-35 near the Bexar/Guadalupe County line to IH 37 in the San Antonio Central Business District; SH 16 from I-410 to Loop 1604 North; and the US 281/Wurzbach Parkway Interchange (collectively "projects").

In correspondence dated September 19, 2005, AlamoRMA requested that it be permitted to assume development authority for the projects. Such authority would include the assessment of the financial feasibility of the projects, and if feasible the planning, financing, design, construction, operation, and maintenance of the projects by the AlamoRMA.

AlamoRMA would be provided a license to use or lease of state-owned right of way to construct and operate AlamoRMA toll projects on state-owned right of way with minimal impacts to the existing roadways. The projects would involve the expansion of existing highways or construction on new location. The nontoll alternatives will provide an equivalent or greater number of nontolled lanes than currently exist. The nontolled portion of the projects would remain under the jurisdiction of the department. The AlamoRMA proposal would provide leveraged funding for the expeditious financing and construction of the projects, including the proceeds of toll project revenue bonds issued by the AlamoRMA or other funding provided by the private sector.

The construction of these projects is of significant importance to mobility in the San Antonio metropolitan area and within the jurisdictional limits of the AlamoRMA. The commission recognizes that innovative financing methods, including tolls, are an effective means of maximizing the use of limited available resources, without compromising the quality of Texas' transportation system. The commission encourages the development of partnerships (particularly with regional mobility authorities) and the employment of innovative methods to finance and construct needed transportation improvements.

IT IS THEREFORE ORDERED by the commission that the executive director is authorized to negotiate and develop an agreement with the Alamo Regional Mobility Authority for the planning, financing, and potential design, construction, operation, and maintenance of the projects by the AlamoRMA, including the license or lease of state-owned right of way to the AlamoRMA for the purpose of developing these potential AlamoRMA toll projects.

IT IS FURTHER ORDERED that the executive director is directed to present the agreement to the commission for its future consideration.

IT IS FURTHER ORDERED that this order does not constitute compliance with any requirements relating to the transfer of the projects, if applicable, or approval of the transfer of the projects.

IT IS FURTHER ORDERED that the AlamoRMA develop a work plan to secure professional services necessary to hold public meetings and public hearings, to conduct appropriate studies, and to complete schematic designs necessary to construct the projects as toll projects, and to present the work plan for approval to the San Antonio District Engineer no later than January 2006.

c. **Bexar County** - Consider the preliminary approval of a request for financing from the Alamo Regional Mobility Authority to pay for certain costs for developing preliminary feasibility, environmental, public involvement, schematics and preliminary financial plans for managed or tolled lanes on I-35 from the Bexar/Guadalupe County line to the San Antonio Central Business District, managed or tolled lanes on SH 16 west from Interstate Loop 410 to Loop 1604 northwest, and the tolled interchange at US 281 and Wurzbach Parkway

Commissioner Andrade made a motion, seconded by Commissioner Houghton and the commission approved the following minute order presented by Texas Turnpike Authority Division Director of Turnpike Planning and Development Doug Woodall:

110271
TTA

In Minute Order 109523, dated December 18, 2003, the Texas Transportation Commission (commission) authorized the creation of the Alamo Regional Mobility Authority (AlamoRMA), formerly known as the Bexar County Regional Mobility Authority, with the boundaries of the authority to be the entire geographic area of Bexar County, Texas.

The Texas Department of Transportation (department) and the AlamoRMA have worked together to identify an approach to provide for the funding and development of certain transportation system improvements within the jurisdictional limits of the AlamoRMA.

The Metropolitan Transportation Plan of the San Antonio-Bexar County Metropolitan Planning Organization identifies several projects within the jurisdictional limits of the AlamoRMA to be developed as toll projects, including I-35 near the Bexar/Guadalupe County line to I-37 in the San Antonio Central Business District; SH 16 from I-410 to Loop 1604 North; and the US 281/Wurzbach Parkway Interchange.

Transportation Code, §370.301 authorizes the department to provide for or contribute to the payment of costs of the design, financing, construction, operation, or maintenance of a turnpike project by an Regional Mobility Authority (RMA) on terms agreed to by the department and the RMA. Transportation Code, §222.103 authorizes the

department to participate, by spending money from any available source, in the acquisition, construction, maintenance, or operation of a toll facility of a public or private entity on terms and conditions established by the commission.

Pursuant to Transportation Code, §222.103, the commission adopted Title 43, Texas Administrative Code, §27.50-27.58 (toll equity rules) to prescribe conditions for the commission's financing of a toll facility of a public or private entity.

In accordance with Section 27.53 of the toll equity rules, the authority has submitted a request for \$7.5 million for development costs of the projects. The requested assistance would be utilized for project related work performed by AlamoRMA staff and administration, and legal, financial and engineering consulting for the purpose of developing preliminary feasibility, environmental, public involvement, schematics and preliminary financial plans. The assistance may also include plans, specifications and estimates as needed. The financial assistance will be in the form of a loan. The requested financial assistance would be in an amount up to \$7.5 million from department's preliminary engineering funds allocated to the San Antonio District with a \$2.0 million cap for fiscal year 2006.

Information and data required by Section 27.53(b) is either contained in the request for financing or in the petition for authorization to form the authority filed with the department on September 3, 2003. Supplemental information and data required by Section 27.53(c) is contained in the request for financing or has already been provided to the department.

As provided in Minute Order 109523, the AlamoRMA will benefit the state and the traveling public and improve the efficiency of the state's transportation system through the potential construction and operation of the projects, which will enhance mobility and safety within these segments of the state highway system.

The proposed projects are consistent with the approved Texas Transportation Plan and the Metropolitan Transportation Plan of the San Antonio-Bexar County Metropolitan Planning Organization.

NOW, THEREFORE, IT IS DETERMINED that the request for financial assistance submitted by the Alamo Regional Mobility Authority meets the requirements of 43 TAC §27.53 and §27.54(a) and, in accordance with those provisions, the commission grants preliminary approval of the request for financing in the amount up to \$7.5 million, in the form of a loan, and directs the executive director to implement the actions authorized and required by those provisions.

IT IS FURTHER ORDERED that the negotiated financial assistance agreement provide that repayment of this loan will be from toll revenue generated from the projects or revenue obtained by the AlamoRMA under a comprehensive development agreement. The financial assistance agreement shall also provide that a default on this loan will result in an obligation of the AlamoRMA to transfer the projects and all related work product to the department.

IT IS FURTHER ORDERED that, should this request be finally approved, the AlamoRMA update the commission no later than July 2006 on the advancements made in the development of the projects, including a budget report for funds previously spent and expected expenditures for fiscal year 2007.

d. Travis and Williamson Counties - Accept the General Engineering Consultant quarterly progress report as of August 31, 2005, for the 2002 Project of the Central Texas Turnpike System

Commissioner Johnson made a motion, seconded by Commissioner Houghton and the commission approved the following minute order presented by Texas Turnpike Authority Division Director of Turnpike Planning and Development Doug Woodall:

110272
TTA

In TRAVIS and WILLIAMSON COUNTIES, State Highway 130 has been designated a toll project and a controlled access state highway from Interstate 35 north of Georgetown to a southern terminus at US Highway 183.

In TRAVIS and WILLIAMSON COUNTIES, State Highway 45N has been designated a toll project and a controlled access state highway from west of US 183 to SH 130.

In TRAVIS and WILLIAMSON COUNTIES, State Highway Loop 1 has been designated a toll project and a controlled access state highway from the intersection of existing Loop 1 and FM 734 (Parmer Lane) in Austin to the intersection of Loop 1 and SH 45N.

The Texas Transportation Commission (commission) has issued toll revenue bonds and other obligations to finance a portion of the costs of the 2002 Project of the Central Texas Turnpike System, a toll project composed of the SH 130, SH 45N, and Loop 1 project elements, and has entered into an Indenture of Trust dated July 15, 2002 with Bank One, National Association, as Trustee to secure the revenue bonds and other obligations issued for the 2002 Project.

In Section 406 of the Indenture of Trust, the commission covenants that at least quarterly during the construction of the 2002 Project it will cause the general engineering consultant to prepare a progress report in connection with such construction, including current projections with respect to the date the 2002 Project will be open to traffic, the date on which construction will be completed, the cost of the 2002 Project, and the amount of funds required each six months during the remaining estimated period of construction to pay the costs of the 2002 Project.

Section 406 of the Indenture of Trust requires copies of the quarterly progress report to be filed with the commission, the U.S. Department of Transportation, and the Trustee, and to be made available by the Trustee to owners of obligations issued for the 2002 Project.

The commission has previously engaged PBS&J to serve as general engineering consultant in accordance with the Indenture of Trust. A quarterly progress report for the period ending August 2005, attached as Exhibit A, has been prepared by PBS&J in accordance with Section 406 of the Indenture of Trust.

IT IS THEREFORE ORDERED by the commission that the general engineering consultant's quarterly progress report attached as Exhibit A is accepted.]

Note: Exhibit A on file with minute order clerk.

ITEM 7. FINANCE

Travis and Williamson Counties - Accept the Quarterly Investment Report as of August 31, 2005, for the 2002 Project of the Central Texas Turnpike System

Commissioner Johnson made a motion, seconded by Commissioner Houghton and the commission approved the following minute order presented by Chief Financial Officer James Bass:

110273
FIN

Government Code, Chapter 2256 (Public Funds Investment Act) authorizes the Texas Transportation Commission (commission) to purchase, sell, and invest its funds and funds under its control in investments authorized under the Public Funds Investment Act, in accordance with investment policies approved by the commission.

Government Code, §2256.005 requires the commission to adopt a written investment policy regarding the investment of its funds and funds under its control, including a separate written investment strategy for each of the funds or group of funds under its control, and to designate one or more officers or employees of the Texas Department of Transportation (department) as investment officer to be responsible for the investment of funds consistent with the investment policy.

Government Code, §2256.023 requires the designated investment officer to prepare and submit to the commission, not less than quarterly, a written report of investment transactions for all funds covered by the Public Funds Investment Act for the preceding reporting period. The report must describe in detail the investment position of the department on the date of the report, and must be prepared jointly and signed by each investment officer.

Pursuant to this legislation, in Minute Order 108970, dated July 25, 2002, the commission approved and adopted a written investment policy and written investment strategy applicable to funds of the commission held under the Indenture of Trust dated July 15, 2002 securing the outstanding bonds, notes or other obligations issued by the commission to finance a portion of the cost of the initial phase of the Central Texas Turnpike System, also known as the 2002 Project. The investment policy and investment strategy have been amended pursuant to Minute Order 109066, dated October 31, 2002, Minute Order 109339, dated July 31, 2003, Minute Order 109462, dated October 30, 2003, Minute Order 109732, dated July 29, 2004, Minute Order 109963, dated February 24, 2005, and Minute Order 110087, dated May 26, 2005. The commission also adopted

investment strategies in relation to the Texas Mobility Fund on February 24, 2005 and the Lease With an Option to Purchase Houston District Headquarters Complex Project on May 26, 2005. The commission has designated the department's Chief Financial Officer and Deputy Director of Finance as investment officers.

Section 9.0 of the investment policy requires the investment officer to prepare and submit to each member of the commission and the executive director of the department an investment report on no less than a quarterly basis. The report must be prepared in accordance with the requirements of that section, including containing sufficient information to provide for a comprehensive review of investment activity and current investment instruments and performance for the reporting period.

Quarterly investment reports will be prepared for each quarter of the department's fiscal year. A quarterly investment report for the 2002 Project for the period ending August 31, 2005, attached as Exhibit A, and a quarterly investment report for the Lease With an Option to Purchase Houston District Headquarters Complex Project for the period ending August 31, 2005, attached as Exhibit B, has been prepared in accordance with Government Code, §2256.023 and Section 9.0 of the investment policy.

IT IS THEREFORE ORDERED by the commission that the quarterly investment reports attached as Exhibit A and B are accepted.

Note: Exhibit A on file with minute order clerk.

ITEM 8. PASS-THROUGH TOLLS

a. Authority to Negotiate Agreement

(1) Galveston County - Authorize the executive director to negotiate a pass-through toll agreement with Galveston County for improvements to FM 646 from FM 1764 to FM 517

Commissioner Houghton made a motion, seconded by Commissioner Johnson and the commission approved the following minute order presented by Chief Financial Officer James Bass:

110274
FIN

On April 27, 2005, Galveston County (county) submitted a proposal for a pass-through toll agreement. The county's proposal provided for the county to construct improvements to FM 646 from FM 1764 to FM 517.

Section 222.104(b), Transportation Code, authorizes the Texas Department of Transportation (department) to enter into an agreement with a public or private entity that provides for the payment of pass-through tolls to the public or private entity as reimbursement for the construction, maintenance, or operation of a toll or non-toll facility on the state highway system by the public or private entity. A pass-through toll is a per vehicle fee or a per vehicle-mile fee that is determined by the number of vehicles using a facility.

The Texas Transportation Commission (commission) previously adopted rules, codified as 43 TAC §§5.51-5.59, that prescribe the policies and procedures governing the department's implementation of Section 222.104(b), Transportation Code.

Section 5.54 of the commission's rules provide that the commission may authorize the department's executive director or his designee to negotiate a pass-through toll agreement with a public entity after considering the following factors: (1) financial benefits to the state; (2) local public support for the projects; (3) whether the projects are in the department's Unified Transportation Program (UTP); (4) the extent to which the projects will relieve congestion on the state highway system; (5) the potential benefits to regional air quality that may be derived from the projects; (6) compatibility of the proposed projects with existing and planned facilities; and (7) the entity's experience in developing highway projects.

After considering factors described by §5.54, the commission determines that: (1) the proposal has the potential to provide significant financial benefits to the state, subject to the outcome of the negotiations with the county; (2) the county's proposal indicated broad support for the projects and did not identify any opposition; (3) none of the projects identified in the proposal are in the current UTP, therefore future funding sources should be identified; (4) the projects identified in the proposal demonstrate the potential to relieve congestion on the state highway system, and the extent of the relief to the system will be quantified and documented in consultation with the Houston-Galveston Area Council (H-GAC); (5) potential benefits to regional air quality must be quantified and documented by H-GAC through the air quality conformity process in accordance with all state and federal regulations; (6) the projects are compatible with existing and planned transportation facilities; and (7) the county lacks significant experience developing highway projects, but has delegated responsibility to a Program Manager that has extensive experience in roadway conceptual planning, preliminary engineering, and design and construction support services for highway projects.

Before the projects in this proposal are planned, developed, or constructed using funds administered by the department, the projects: (1) must be included in the H-GAC Metropolitan Transportation Plan; (2) must be included in the department's UTP, thereby identifying committed funding for each project; (3) prior to construction, must be included in the H-GAC Transportation Improvement Program and the department's Statewide Transportation Improvement Program; and (4) will be subject to any and all applicable planning and environmental processes and approvals as mandated by state and federal regulations regarding such matters.

IT IS THEREFORE ORDERED that the executive director or his designee is authorized to negotiate a pass-through toll agreement with Galveston County. If the negotiations are successful, the executive director shall submit to the commission a summary of the final terms of the agreement so that the commission may consider final approval under §5.56 of its rules.

(2) **Hays County** - Authorize the executive director to negotiate a pass-through toll agreement with Hays County for improvements to various highway projects in the county

Commissioner Johnson made a motion, seconded by Commissioner Houghton and the commission approved the following minute order presented by Chief Financial Officer James Bass:

110275
FIN

On May 3, 2005, Hays County (county) submitted a proposal for a pass-through toll agreement. The county's proposal provided for the county to construct improvements to US 290, RM 12, FM 1626, and FM 967.

Section 222.104(b), Transportation Code, authorizes the Texas Department of Transportation (department) to enter into an agreement with a public or private entity that provides for the payment of pass-through tolls to the public or private entity as reimbursement for the construction, maintenance, or operation of a toll or non-toll facility on the state highway system by the public or private entity. A pass-through toll is a per vehicle fee or a per vehicle-mile fee that is determined by the number of vehicles using a facility.

The Texas Transportation Commission (commission) previously adopted rules, codified as 43 TAC §§5.51-5.59, that prescribe the policies and procedures governing the department's implementation of Section 222.104(b), Transportation Code.

Section 5.54 of the commission's rules provide that the commission may authorize the department's executive director or his designee to negotiate a pass-through toll agreement with a public entity after considering the following factors: (1) financial benefits to the state; (2) local public support for the projects; (3) whether the projects are in the department's Unified Transportation Program (UTP); (4) the extent to which the projects will relieve congestion on the state highway system; (5) the potential benefits to regional air quality that may be derived from the projects; (6) compatibility of the proposed projects with existing and planned facilities; and (7) the entity's experience in developing highway projects.

After considering factors described by §5.54, the commission determines that: (1) the proposal has the potential to provide significant financial benefits to the state, subject to the outcome of the negotiations with the county; (2) the county's proposal indicated broad support for the projects and did not identify any opposition; (3) none of the projects identified in the proposal are in the current UTP, therefore future funding sources should be identified; (4) the projects identified in the proposal demonstrate the potential to relieve congestion on the state highway system, and the extent of the relief to the system will be quantified and documented in consultation with the Capital Area Metropolitan Planning Organization (CAMPO); (5) potential benefits to regional air quality must be quantified and documented by CAMPO through the air quality conformity process in accordance with all state and federal regulations; (6) the projects are compatible with existing and planned transportation facilities; and (7) the county lacks significant

experience developing highway projects, but has delegated responsibility to a Program Manager that has extensive experience in roadway conceptual planning, preliminary engineering, and design and construction support services for highway projects.

Before the projects in this proposal are planned, developed, or constructed using funds administered by the department, the projects: (1) must be included in the CAMPO Metropolitan Transportation Plan; (2) must be included in the department's UTP, thereby identifying committed funding for each project; (3) prior to construction, must be included in the CAMPO Transportation Improvement Program and the department's Statewide Transportation Improvement Program; and (4) will be subject to any and all applicable planning and environmental processes and approvals as mandated by state and federal regulations regarding such matters.

IT IS THEREFORE ORDERED that the executive director or his designee is authorized to negotiate a pass-through toll agreement with Hays County. If the negotiations are successful, the executive director shall submit to the commission a summary of the final terms of the agreement so that the commission may consider final approval under §5.56 of its rules.

b. Authority to Execute Agreement

Williamson County - Authorize the executive director to execute a pass-through toll agreement with Williamson County for improvements to various highway projects in the county

Commissioner Johnson made a motion, seconded by Commissioner Houghton and the commission approved the following minute order presented by Chief Financial Officer James Bass:

110276
FIN

On December 14, 2004, Williamson County (county) submitted a proposal for a pass-through toll agreement. The county's proposal, among other things, provided for the county to construct improvements to FM 1660 from CR 134 to CR 101, I-35/SH 29 Interchange turnaround structures, US 79 from east city limits of Hutto to CR 402 and from east of Taylor to the Milam county line, RM 2338 from FM 3405 to Ronald Reagan Boulevard and US 183 from San Gabriel River to SH 29.

In accordance with Section 222.104(b), Transportation Code, the Texas Transportation Commission (commission) granted preliminary approval on March 31, 2005 by Minute Order 110003 authorizing the Texas Department of Transportation (department) to enter into an agreement with a public or private entity that provides for the payment of pass-through tolls to the public or private entity as reimbursement for the construction, maintenance, or operation of a toll or non-toll facility on the state highway system by the public or private entity. A pass-through toll is a per-vehicle fee or a per-vehicle-mile fee that is determined by the number of vehicles using a facility.

The commission previously adopted rules, codified as 43 TAC §§5.51-5.59, that prescribe the policies and procedures governing the department's implementation of Section 222.104(b), Transportation Code.

Section 5.54 of the commission's rules provide that the commission may authorize the department's executive director or his designee to negotiate a pass-through toll agreement with a public entity after considering the following factors: (1) financial benefits to the state; (2) local public support for the projects; (3) whether the projects are in the department's Unified Transportation Program (UTP); (4) the extent to which the projects will relieve congestion on the state highway system; (5) the potential benefits to regional air quality that may be derived from the projects; (6) compatibility of the proposed projects with existing and planned facilities; and (7) the entity's experience in developing highway projects.

The department and Williamson County have agreed to a reimbursement through pass-through tolls of \$151,942,000 for the construction of the projects in their proposal. The per-vehicle-mile reimbursement rate will be \$0.10 per mile. The minimum amount to be reimbursed in any year with all projects open to traffic is \$7,597,100 and the maximum amount will be \$15,194,200. The agreement will expire once the total amount of the agreement has been reimbursed. The project will be authorized in Category 12, Strategic Priority, and will be reimbursed from Strategic Priority funds.

Before the projects in this proposal are planned, developed, or constructed using funds administered by the department, the projects: (1) must be included in the Capital Area Metropolitan Planning Organization (CAMPO) Metropolitan Transportation Plan; (2) must be included in the department's UTP, thereby identifying committed funding for each project; (3) prior to construction, must be included in the CAMPO Transportation Improvement Program and the department's Statewide Transportation Improvement Program; and (4) will be subject to any and all applicable planning and environmental processes and approvals as mandated by state and federal regulations regarding such matters.

IT IS THEREFORE ORDERED that the executive director or his designee is authorized to execute a pass-through toll agreement with Williamson County in accordance with the negotiated terms and such other terms the department determines are necessary.

ITEM 9. TRAFFIC OPERATIONS

Dallas, Harris, and Tarrant Counties - Proposed lane use restrictions for trucks on I-20 in Dallas County, I-10 and US 290 in Harris County and I-30 in Tarrant County

Commissioner Johnson made a motion, seconded by Commissioner Houghton and the commission approved the following minute order presented by Traffic Operations Division Director Carlos Lopez:

110277
TRF

Transportation Code, §545.0651, authorizes the Texas Department of Transportation (department) to restrict through traffic, by class of vehicle, to two or more

designated lanes of traffic on certain portions of the designated state highway system, and requires the Texas Transportation Commission (commission) to adopt rules. The commission adopted these rules, 43 TAC §§25.601-25.604 that became effective on January 8, 2004.

The department, working in conjunction with local jurisdictions developed proposed lane restrictions shown in Exhibit A. In accordance with §25.604(e)(3), the department conducted traffic studies to evaluate the impact of the lane restrictions. In accordance with §25.604(d), the department published notices in the Texas Register for a 30-day comment period and held public hearings in the local jurisdictions on the proposed restrictions. No comments were received at the public hearings or through the mail.

In accordance with Transportation Code §545.601 and 43 TAC §§25.601-25.604, the department is proposing lane restrictions that would establish consistent lane use restrictions applicable to trucks, as defined in Transportation Code, §541.201, with three or more axles, and to truck tractors, also as defined in Transportation Code, §541.201, regardless of whether the truck tractor is drawing another vehicle or trailer. The proposed lane restrictions prohibit those vehicles from using lane one (inside left lane) of controlled access lanes on each side of the highways listed in Exhibit A. The proposed lane restrictions would be in effect 24-hours-a-day, 7-days-a-week, and would allow the operation of those vehicles in a prohibited traffic lane for the purposes of passing another vehicle or entering or exiting the highway.

In accordance with 43 TAC §25.604(h)(2), the executive director may temporarily suspend the lane restriction in an emergency.

The commission, having evaluated the truck lane restriction proposals based on the safety of the traveling public and the factors listed in 43 TAC §25.604(f), finds that the proposed lane restrictions should be approved.

IT IS THEREFORE ORDERED by the commission that the proposed lane restrictions are approved and shall become effective upon placement of all necessary traffic control devices.

Note: Exhibit A on file with minute order clerk.

ITEM 10. CONTRACTS

a. Award or Reject Highway Improvement Contracts

(1) Maintenance

Commissioner Houghton made a motion, seconded by Commissioner Johnson and the commission approved the following minute order, rejecting Project No. RMC 6128-38-001 in Collin County presented by Construction Division Director Thomas Bohuslav:

110278
CST

Pursuant to Transportation Code, Chapter 223, Subchapter A, and Title 43, Texas Administrative Code, Chapter 9, Subchapter B, the Texas Department of Transportation

(department) solicited and received sealed competitive bid proposals for maintenance of the State Highway System, which were publicly opened and read on October 6 and 7, 2005.

Pursuant to cited code provisions highway maintenance contract bids on a project may be accepted or rejected, but if accepted must be awarded to the lowest bidder.

An award is conditional in the event it is subject to Federal Highway Administration concurrence, third party funding or concurrence, and other conditions listed in the contract.

The department recommends that the Texas Transportation Commission (commission) respectively award to the lowest bidder or reject, as indicated, those highway maintenance contracts, with an engineer's estimated cost of \$300,000 or more, identified on attached Exhibit A to this order.

IT IS THEREFORE ORDERED by the commission that the highway maintenance contracts described in Exhibit A be and are hereby respectively awarded to the lowest bidder or rejected as indicated therein.

If a contractual requirement of award is not satisfied within the prescribed time limit, including any extension of time allowed by the executive director or the director's designee, by reason of the action or inaction of the successful low bidder on any contract, including, but not limited to, disadvantaged business/historically underutilized business participation, the contract is automatically in default and the executive director is authorized and directed to retain and deposit the related contract proposal guaranty to the credit of the State Highway Fund and to readvertise that project for competitive bids at the earliest practical subsequent date.

If a condition of award is not satisfied, including, but not limited to, reason of nonconcurrence of the Federal Highway Administration, the failure of a third party to fund or concur, or failure to meet other conditions in the contract, the respective award is voided and the department will return the bid guaranty.

Note: Exhibit A on file with minute order clerk.

(2) Highway and Building Construction

Commissioner Johnson made a motion, seconded by Commissioner Andrade, and the commission approved the following minute order, rejecting Project Nos. C47-18-055 in Grayson County; STP 2005(962)SFT in Panola County; and STP 2005(952)SFT in Terry County presented by Construction Division Director Thomas Bohuslav:

110279
CST

Pursuant to Transportation Code, Chapter 223, Subchapter A, and Title 43, Texas Administrative Code, Chapter 9, Subchapter B, the Texas Department of Transportation (department) solicited and received sealed competitive bid proposals for improvement of the State Highway System, which were publicly opened and read on October 6 and 7, 2005 as well as the Cameron County, Job Number 3208, Pharr District deferred from the September 29, 2005 Commission meeting.

Pursuant to cited code provisions highway improvement contract bids on a project may be accepted or rejected, but if accepted must be awarded to the lowest bidder.

An award is conditional in the event it is subject to Federal Highway Administration concurrence, third party funding or concurrence, and other conditions listed in the contract.

The department recommends that the Texas Transportation Commission (commission) respectively award to the lowest bidder or reject, as indicated, those highway improvement contracts identified on attached Exhibit A to this order.

IT IS THEREFORE ORDERED by the commission that the highway improvement contracts described in Exhibit A be and are hereby respectively awarded to the lowest bidder or rejected as indicated therein.

If a contractual requirement of award is not satisfied within the prescribed time limit, including any extension of time allowed by the executive director or the director's designee, by reason of the action or inaction of the successful low bidder on any contract, including, but not limited to, disadvantaged business/historically underutilized business participation, the contract is automatically in default and the executive director is authorized and directed to retain and deposit the related contract proposal guaranty to the credit of the State Highway Fund and to readvertise that project for competitive bids at the earliest practical subsequent date.

If a condition of award is not satisfied, including, but not limited to, reason of nonconcurrence of the Federal Highway Administration, the failure of a third party to fund or concur, or failure to meet other conditions in the contract, the respective award is voided and the department will return the bid guaranty.

Note: Exhibit A on file with minute order clerk.

ITEM 11. ROUTINE MINUTE ORDERS

Commissioner Houghton made a motion, seconded by Commissioner Andrade, and the commission approved the following minute orders presented by Executive Director Michael W. Behrens.

a. Donations to the Department

(1) Brazos County - Consider a donation from Keep Brazos Beautiful for approximately \$30,000 worth of wildflower seeds to be planted on state right of way

110280
OGC

This minute order considers a donation to the Texas Department of Transportation (department) from Keep Brazos Beautiful (KBB) for approximately 1,000 to 1,200 pounds of wildflower seeds. The wildflower seeds, with an approximate value of \$27,500 to \$33,000, will be used to plant on the state's right of way as part of the 8th Annual *Blanket the Brazos* Wildflower Seed Campaign, which supports the department's litter prevention, highway maintenance, and beautification programs.

This donation has been examined, and the department recommends issuance of this minute order on the ground that it is in the best interest and welfare of the traveling public.

Transportation Code, §201.206, authorizes the department to accept a donation in any form, including realty, personalty, money, materials, and services, for the purpose of carrying out its functions and duties. Government Code, Chapter 575, requires the governing board of a state agency to acknowledge the acceptance of a donation valued at \$500 or more by majority vote at an open meeting, not later than the 60th day after the date the donation is accepted. It also prohibits a state agency from accepting a donation from a person who is a party to a contested case before the agency until the 30th day after the date the decision in the case becomes final.

The Texas Transportation Commission (commission) has adopted 43 TAC §§1.500-1.506, which relate to the department's acceptance of donations. Section 1.503 prohibits acceptance of a gift or donation when the donor is subject to department regulation or oversight or when the donor is interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department, except as provided by that section. It also provides that the commission may approve the acceptance of a donation, notwithstanding the foregoing proscriptions in the rules, if it determines that acceptance would provide a significant public benefit and would not influence or reasonably appear to influence the department in the performance of its duties.

The commission finds that the donation will further the department's responsibilities and that the donor is not a party to a contested case before the department and has not been a party to a contested case before the department during the last 30 days. The commission also finds that the donor is not subject to department regulation or oversight and is not interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department.

IT IS THEREFORE ORDERED by the commission that the estimated donation of \$27,500 to \$33,000 worth of wildflower seeds by KBB is accepted. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acceptance of the donation.

(2) **Bridge Division** - Consider a donation Acknowledge a donation from the Precast/Prestressed Concrete Institute (PCI) for a department employee's travel expenses to attend the PCI Convention and National Bridge Conference that was held in Palm Springs, California from October 16-19, 2005

110281
OGC

This minute order acknowledges a donation of \$1,273.95 in travel expenses from the Precast/Prestressed Concrete Institute (PCI) for a Texas Department of Transportation (department) employee that attended PCI's Convention and National Bridge Conference. The convention and conference was held from October 16-19, 2005, in Palm Springs, California.

The department has determined that acceptance of the donation is in the best interest and welfare of the traveling public and will provide a significant public benefit.

Transportation Code, §201.206, authorizes the department to accept a donation in any form, including realty, personalty, money, materials, and services, for the purpose of carrying out its functions and duties. Government Code, Chapter 575, requires the governing board of a state agency to acknowledge the acceptance of a donation valued at \$500 or more by majority vote at an open meeting, not later than the 60th day after the date the donation is accepted. It also prohibits a state agency from accepting a donation from a person who is a party to a contested case before the agency until the 30th day after the date the decision in the case becomes final.

The Texas Transportation Commission (commission) has adopted 43 TAC §§1.500-1.506, which relate to the department's acceptance of donations. Section 1.503 prohibits acceptance of a gift or donation when the donor is subject to department regulation or oversight or when the donor is interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department, except as provided by that section. It also provides that the commission may approve the acceptance of a donation, notwithstanding the foregoing proscriptions in the rules, if it determines that acceptance would provide a significant public benefit and would not influence or reasonably appear to influence the department in the performance of its duties.

The commission finds that the donation will further the department's responsibilities and that the donor is not a party to a contested case before the department and has not been a party to a contested case before the department during the last 30 days.

The commission also finds that the donor is not subject to department regulation or oversight and is not interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department. Members of the donor's organization may be interested in a contract, but, nonetheless, the commission finds that this donation will not influence or reasonably appear to influence the department in the performance of its duties.

IT IS THEREFORE ORDERED by the commission that the donation of \$1,273.95 by PCI is acknowledged. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acknowledgement of the donation.

(3) Human Resources Division - Acknowledge a donation from KARRASS for two department employees' registration fees to attend a showcase on a training program entitled, "Effective Negotiating in Your Own Organization." The showcase was held in Dallas, Texas from September 15-16, 2005

110282
OGC

This minute order acknowledges a donation of \$2,260 in registration fees from KARRASS, a negotiating seminars provider to the Texas Department of Transportation (department) for two department employees that attended a showcase for a new training

program entitled, "Effective Negotiating In Your Own Organization." The showcase was held from September 15-16, 2005, in Dallas, Texas.

The department has determined that acceptance of the donation is in the best interest and welfare of the traveling public and will provide a significant public benefit.

Transportation Code, §201.206, authorizes the department to accept a donation in any form, including realty, personalty, money, materials, and services, for the purpose of carrying out its functions and duties. Government Code, Chapter 575, requires the governing board of a state agency to acknowledge the acceptance of a donation valued at \$500 or more by majority vote at an open meeting, not later than the 60th day after the date the donation is accepted. It also prohibits a state agency from accepting a donation from a person who is a party to a contested case before the agency until the 30th day after the date the decision in the case becomes final.

The Texas Transportation Commission (commission) has adopted 43 TAC §§1.500-1.506, which relate to the department's acceptance of donations. Section 1.503 prohibits acceptance of a gift or donation when the donor is subject to department regulation or oversight or when the donor is interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department, except as provided by that section. It also provides that the commission may approve the acceptance of a donation, notwithstanding the foregoing proscriptions in the rules, if it determines that acceptance would provide a significant public benefit and would not influence or reasonably appear to influence the department in the performance of its duties.

The commission finds that the donation will further the department's responsibilities and that the donor is not a party to a contested case before the department and has not been a party to a contested case before the department during the last 30 days.

The commission also finds that the donor is not subject to department regulation or oversight. The department currently has a contract with KARRASS to provide external training classes, but, nonetheless, the commission finds that this donation will not influence or reasonably appear to influence the department in the performance of its duties.

IT IS THEREFORE ORDERED by the commission that the donation of \$2,260 by KARRASS is accepted. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acknowledgement of the donation.

(4) Live Oak County - Consider a donation from Mr. Bruce Harvey, a private landowner, for funds associated with upgrading highway fencing alongside I-37

110283
OGC

This minute order considers a donation of \$57,000 to the Texas Department of Transportation (department) from Mr. Bruce Harvey, a private property landowner. Mr. Harvey would like to subsidize the cost of upgrading fencing from a five-strand wire fence to a game fence alongside 1.6 miles of his property on INTERSTATE 37 in Live Oak County.

This donation has been examined, and the department recommends issuance of this minute order on the ground that it is in the best interest and welfare of the traveling public.

Transportation Code, §201.206, authorizes the department to accept a donation in any form, including realty, personalty, money, materials, and services, for the purpose of carrying out its functions and duties. Government Code, Chapter 575, requires the governing board of a state agency to acknowledge the acceptance of a donation valued at \$500 or more by majority vote at an open meeting, not later than the 60th day after the date the donation is accepted. It also prohibits a state agency from accepting a donation from a person who is a party to a contested case before the agency until the 30th day after the date the decision in the case becomes final.

The Texas Transportation Commission (commission) has adopted 43 TAC §§1.500-1.506, which relate to the department's acceptance of donations. Section 1.503 prohibits acceptance of a gift or donation when the donor is subject to department regulation or oversight or when the donor is interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department, except as provided by that section. It also provides that the commission may approve the acceptance of a donation, notwithstanding the foregoing proscriptions in the rules, if it determines that acceptance would provide a significant public benefit and would not influence or reasonably appear to influence the department in the performance of its duties.

The commission finds that the donation will further the department's responsibilities and that the donor is not a party to a contested case before the department and has not been a party to a contested case before the department during the last 30 days. The commission also finds that the donor is not subject to department regulation or oversight and is not interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department.

IT IS THEREFORE ORDERED by the commission that the donation of \$57,000 by Mr. Harvey is accepted. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acceptance of the donation.

(5) Texas Turnpike Authority Division - Consider a donation from Infrastructure Journal for a department employee's travel expenses to participate in the Transportation Investment Forum to be held from November 7-8, 2005 in Glasgow, Scotland

110284
OGC

This minute order considers a donation of \$1,929.58 from Infrastructure Journal (IJ) for a Texas Department of Transportation (department) employee's travel expenses. The employee will be making a presentation at the 2005 IJ Transport Investment Forum to be held in Glasgow, Scotland from November 7-8, 2005.

The department has determined that acceptance of the donation is in the best interest and welfare of the traveling public and will provide a significant public benefit.

Transportation Code, §201.206, authorizes the department to accept a donation in any form, including realty, personalty, money, materials, and services, for the purpose of carrying out its functions and duties. Government Code, Chapter 575, requires the governing board of a state agency to acknowledge the acceptance of a donation valued at \$500 or more by majority vote at an open meeting, not later than the 60th day after the date the donation is accepted. It also prohibits a state agency from accepting a donation from a person who is a party to a contested case before the agency until the 30th day after the date the decision in the case becomes final.

The Texas Transportation Commission (commission) has adopted 43 TAC §§1.500-1.506, which relate to the department's acceptance of donations. Section 1.503 prohibits acceptance of a gift or donation when the donor is subject to department regulation or oversight or when the donor is interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department, except as provided by that section. It also provides that the commission may approve the acceptance of a donation, notwithstanding the foregoing proscriptions in the rules, if it determines that acceptance would provide a significant public benefit and would not influence or reasonably appear to influence the department in the performance of its duties.

The commission finds that the donation will further the department's responsibilities and that the donor is not a party to a contested case before the department and has not been a party to a contested case before the department during the last 30 days.

The commission also finds that the donor is not subject to department regulation or oversight, and that this donation will not influence or reasonably appear to influence the department in the performance of its duties.

IT IS THEREFORE ORDERED by the commission that the donation of approximately \$1,929.58 by IJ is accepted. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acceptance of the donation.

b. Eminent Domain Proceedings

Various Counties - noncontrolled and controlled access highways (see attached itemized list)

110285
ROW

The Texas Transportation Commission (commission) of the State of Texas (state) has found in order to promote the public safety, to facilitate the safety and movement of traffic and to preserve the financial investment of the public in its highways, public necessity requires the laying out, opening, constructing, reconstructing, maintaining, and operating of the following highways in the state as a part of the State Highway System (highway system).

The commission has found and determined that each of the following listed parcels of land, same being more particularly described in the exhibits attached hereto, and such additional lesser estates or property interests described thereon, are necessary or convenient for use for such purposes and it is necessary to acquire fee simple title to said land, as provided by Texas Transportation Code, Subchapter D, Chapter 203, Sections 203.051, 203.052, and 203.054, as a part of the highway system to be constructed, reconstructed, maintained and operated thereon.

The commission has found in order to promote the public safety, to facilitate the safety and movement of traffic, to preserve the financial investment of the public in its highways and reconstructing, maintaining, and operating of Controlled Access Highways in the state as a part of the highway system at such locations as are necessary throughout the state and has determined that each of the following listed parcels of land, described in those Exhibits designated, identified and listed by an alphabetical exhibit reference under "CONTROLLED ACCESS" and same being more particularly described in the exhibits attached hereto and such additional lesser estates or property interests described thereon, are necessary and suitable for use for such purposes and it is necessary to acquire fee simple title to said land, as provided by law, as a part of the highway system to be so constructed, reconstructed, maintained, and operated thereon and in the exercise of the police power of the state for the preservation of human life and safety, and under existing laws, the highway to be constructed on each such parcel of land is designated as a Controlled Access Highway, and on such parcels of land listed herein where there is remaining abutting private property, roads are to be built as a part of said highway whereby the right of ingress and egress to or from the remaining private property abutting on said highway is to be permitted and/or denied, as designated and set forth on each of the exhibits attached hereto.

The commission, through its duly authorized representatives, has attempted to negotiate with the owner(s) of the parcels of land described in the attached exhibits and has been unable to agree with such owner(s) as to the fair cash market value thereof and damages, if any, or after diligent search of available records, numerous inquiries, and actual visits to the location of said parcels of land has been unable to locate the owner(s) of same so as to enter into negotiations for the purchase of said parcels of land.

IT IS THEREFORE ORDERED that the executive director is hereby authorized and directed to transmit this request of the commission to the attorney general to file or cause to be filed against all owners, lienholders and any owners of any other interests in said parcels of land, proceedings in eminent domain to acquire in the name of and on behalf of the state, for said purposes, fee simple title to each such parcel of land as are more particularly described in each of the exhibits attached hereto and made a part hereof, and such additional lesser estates or property interests as are more fully described in each of said exhibits, save and excepting, oil, gas and sulphur, as provided by law, to wit:

NON-CONTROLLED ACCESS

<u>EXHIBIT</u>	<u>COUNTY</u>	<u>HIGHWAY</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
1	Robertson	SH 6	0049-06-070	18
2	Robertson	SH 6	0049-06-070	26
3	Marion	US 59	0062-05-056	6 Pt.1A
4	Marion	US 59	0062-05-056	73 Pts.1&2
5	Gregg	SH 135	0377-01-041	36

CONTROLLED ACCESS

<u>EXHIBIT</u>	<u>COUNTY</u>	<u>HIGHWAY</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
A	Hidalgo	US 83	0039-17-144	8
B	Hidalgo	US 83	0039-17-144	69A
C	Hidalgo	US 83	0039-17-144	71
D	Hidalgo	US 83	0039-17-144	73
E	Hidalgo	US 83	0039-17-144	82
F	Hidalgo	US 83	0039-17-144	100
G	Hidalgo	US 83	0039-17-144	127
H	Travis	SH 71	0113-13-086	59A
I	Travis	SH 71	0113-13-086	64A
J	Travis	SH 71	0113-13-086	65A
K	Bell	LP 363	0184-04-042	4
L	Dallas	IH 35	0196-03-231	27
M	Dallas	IH 35	0196-03-231	29
N	Harris	IH 10	0271-06-100	390
O	Williamson	SH 130	0440-05-007	1133
P	Travis	SH 130	0440-06-008	305C
Q	Travis	SH 130	0440-06-008	314
R	Travis	SH 130	0440-06-008	318
S	Travis	SH 130	0440-06-008	393
T	Travis	SH 130	0440-06-008	1221AC
U	Travis	SH 130	0440-06-008	1308
V	Travis	SH 130	0440-06-008	1332
W	Travis	SH 130	0440-06-008	1333
X	Johnson	SH 121	0504-05-002	92
Y	Dallas	IH 635	2374-02-115	35
Z	Dallas	IH 635	2374-02-115	56
AA	Bexar	Wurzbach Pkwy	8000-15-007	20
BB	Bexar	Wurzbach Pkwy	8000-15-007	22
CC	Bexar	Wurzbach Pkwy	8000-15-007	33/33E

Note: Exhibits 1 through 5 and A through CC on file with minute order clerk.

c. Highway Designations

(1) Brown County - Designate a segment of FM 823 along a new location on the state highway system and redesignate a segment of FM 3064 as FM 823 in the city of Brownwood

110286
TPP

In BROWN COUNTY (county) in the city of Brownwood (city), city officials have requested that FARM TO MARKET ROAD 823 be designated on the state highway system along a new location. In order to facilitate the flow of traffic, promote public safety, and maintain continuity on the state highway system, a segment of FARM TO MARKET ROAD 3064 will be redesignated on the state highway system as an extension of FM 823.

Pursuant to Texas Transportation Code, §§201.103 and 221.001, the executive director has recommended that the new location be designated on the state highway system as FM 823, that a segment of FM 3064 be redesignated on the state highway system as an extension of FM 823.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that:

1. FARM TO MARKET ROAD 823 is designated on the state highway system along a new location from the intersection of FM 45 northward to the intersection of FM 3064, a distance of approximately 1.3 miles.
2. A segment of FARM TO MARKET ROAD 3064 is redesignated on the state highway system as an extension of FM 823 from the intersection of FM 823 northward to its present terminus at Asbury Street, a distance of approximately 0.9 mile.

(2) Kaufman County - Remove a segment of FM 548 from the state highway system and return control, jurisdiction, and maintenance to the city of Forney

110287
TPP

In KAUFMAN COUNTY (county) in the city of Forney (city), city officials have requested that the former location of FARM TO MARKET ROAD 548 be removed from the state highway system and returned to the city for control, jurisdiction, and maintenance.

Pursuant to Texas Transportation Code, §§201.103 and 221.001, the executive director has recommended that the former location of FM 548 is removed from the state highway system.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the former location of FARM TO MARKET ROAD 548 is removed from the state highway system from approximately 0.6 mile north of the intersection of US 80 southwestward to the intersection of US 80, a distance of approximately 0.6 mile.

d. Load Zones & Postings

Comanche County - Revise load restrictions on a bridge on FM 1689

110288
BRG

The Texas Transportation Commission (commission) under provision of V.T.C.A., Transportation Code, §621.102, may set the maximum gross weight of a

vehicle and its load, maximum gross weight of a combination of vehicles and loads, maximum axle load, or maximum wheel load that may be moved over a state highway or a farm or ranch road if the commission finds that heavier maximum weight would rapidly deteriorate or destroy the road or a bridge along the road.

Pursuant to §621.102, a maximum weight or load may not exceed the maximum set by statute for that weight or load. This section does not apply to a vehicle delivering groceries, farm products, or liquefied petroleum gas.

An engineering and traffic investigation has been made to determine and fix the maximum loads that may be moved over the state highway system.

It has been determined from this investigation that the loads on certain bridges of the state highway system should be restricted or previous restrictions should be revised or removed.

IT IS THEREFORE ORDERED by the commission that the maximum load limits which may be moved over those bridges described in Exhibit A be revised as set forth therein, superseding any portion of previous action in conflict. The executive director shall proceed with the revision of signs as appropriate, making the revision of these load limitations effective and operative.

Note: Exhibit A on file with minute order clerk.

e. Right of Way Dispositions and Donations

(1) Bexar County - Loop 1604 at Huebner Road in San Antonio - Consider the sale of a surplus drainage channel easement

110289
ROW

In BEXAR COUNTY, on STATE HIGHWAY LOOP 1604, the State of Texas (state) acquired an easement interest in certain land for highway drainage purposes by instrument recorded in Volume 4335, Page 72, Deed Records of Bexar County, Texas.

A portion of the land (surplus easement), described in Exhibit A, is no longer needed for a state highway purpose.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the sale of surplus easements.

Concordia Group, a Texas general partnership, (partnership) is the owner of the fee underlying the surplus easement and has requested that the surplus easement be sold to the partnership for \$33,279.

The commission finds \$33,279 to be a fair and reasonable value for the state's rights and interest in the surplus easement.

NOW, THEREFORE, the commission finds that the surplus easement is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument conveying the state's rights and interest in the surplus easement to Concordia Group, a Texas general partnership, for \$33,279.

Note: Exhibit A on file with minute order clerk.

(2) Chambers County - FM 2354 south of FM 565 - Consider the release of a surplus easement

110290
ROW

In CHAMBERS COUNTY, on FARM TO MARKET ROAD 2354, the State of Texas (state) acquired certain land needed for borrow source easement purposes by instrument styled Judgment of the Court in Cause No. 590 in the County Court of Chambers County, Texas, recorded under Film Code Number 88 64 230, Official Public Records, Chambers County, Texas.

All of the land (surplus easement) that the state acquired in the Judgment described above is no longer needed for a state highway purpose.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the release of the state's rights and interest to the underlying fee owner.

A.B. Fisher Properties, Ltd.; D&M Fisher, Ltd.; Mikel C. Causey; Genevieve Hortence Ilfrey Lincoln; Rhonda Gay Casey Hagan; Drouett Baker Casey; Debra Gardner Casey; and Mona Joyce Leslie Costley are the underlying fee owners and have requested that the state release its rights and interest in the surplus easement.

The commission finds that it is proper and correct that the state release its rights and interest in the surplus easement to the parties listed above at no cost since the borrow source material has been depleted and has no value.

NOW, THEREFORE, the commission finds that the surplus easement is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument releasing all of the state's rights and interest in the surplus highway easement to the parties listed above.

(3) El Paso County - FM 258 (Socorro Road) at Southside Road in El Paso - Consider the sale of a surplus maintenance site

110291
ROW

In the city of El Paso, EL PASO COUNTY, on FARM TO MARKET 258, the State of Texas (state) acquired certain land for a maintenance site by instruments recorded in Volume 1587, Page 179, and Volume 1627, Page 1099, Deed Records of El Paso County, Texas.

The land and the improvements (surplus land), described in Exhibit A, are no longer needed for a state highway purpose.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, as amended, the Texas Department of Transportation may recommend the sale of real property which is no longer needed for a state highway purpose.

Ysleta del Sur Pueblo (tribe) has requested that the state sell the surplus land to the tribe for \$140,000.

The Texas Transportation Commission finds \$140,000 to be a fair and reasonable value for the state's rights, title and interest in the surplus land.

NOW, THEREFORE, the commission finds that the surplus land is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to Ysleta del Sur Pueblo for \$140,000; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A on file with minute order clerk.

(4) Johnson County - I-35W at FM 917 in Burleson - Amend MO 109998 to revise the value of the consideration for surplus right of way

110292
ROW

In the city of Burleson, JOHNSON COUNTY, on INTERSTATE HIGHWAY 35W, the State of Texas (state) acquired certain land for state highway purposes by instruments recorded in Volume 380, Page 227, Volume 450, Page 65, and Volume 443, Page 599, Deed Records of Johnson County, Texas.

The Texas Transportation Commission (commission) approved Minute Order 109998 on February 25, 2005, authorizing the sale of surplus land. The appraised value of the land has been revised to be \$15,682. This minute order authorizes the sale of the surplus land for the revised value.

The commission finds \$15,682 to be a fair and reasonable value for the state's rights, title and interest in the surplus land.

NOW, THEREFORE, IT IS ORDERED, that Minute Order 109998 be amended only with respect to the value of the surplus land, and all other provisions of Minute Order 109998 are to remain unchanged.

FURTHER, the commission recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to Mouser Family Limited Partnership #1 for \$15,682.

(5) Travis County - US 183 at Tracor Lane in Austin - Consider the exchange of right of way

110293
ROW

In the city of Austin, TRAVIS COUNTY, on US 183, the State of Texas (state) acquired certain land for state highway purposes by instruments recorded in Volume 2766, Page 423, and Volume 3298, Page 1548, Deed Records of Travis County, Texas.

An easement interest for parking purposes (perpetual easement), described in Exhibit A, is no longer needed for a state highway purpose.

BAE Systems Integrated Defense Solutions, Inc., (BAE) has conveyed to the state land needed for highway redesign and improvement and for control of access (new land), described in Exhibits B and C, and desires to make a partial donation to the state of the value of the new land.

V.T.C.A., Transportation Code, Chapter 201, Subchapter D, authorizes the Texas Department of Transportation (department) to accept donations of real property for the purpose of carrying out its functions and duties.

V.T.C.A., Government Code, Chapter 575, requires the Texas Transportation Commission (commission) to accept by majority vote at an open meeting any gift or donation valued at over \$500, and the commission hereby finds that acceptance of the donation will provide a significant public benefit and will not influence or reasonably appear to influence the department in the performance of its duties.

An Agreement Concerning the Donation of Property to the Texas Department of Transportation (donation agreement) has been executed by the owner and tendered to the department for acceptance under the provisions of Title 43, Texas Administrative Code, Chapter 1, Subchapter G, since the value of the new land provided by the owner, which is \$249,553 exceeds the value of the perpetual easement, which is \$12,231.

BAE has executed and delivered to the state proper instruments for the new land under the terms of the donation agreement and has requested that the state release the perpetual easement to BAE.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission may recommend the release of surplus easements and the exchange of easements as partial or full consideration for other land needed by the state for highway purposes.

It is the opinion of the commission that it is proper and correct that the state release its rights and interest in the perpetual easement in exchange and as consideration for the partial donation and the conveyance of the new land to the state.

IT IS THEREFORE ORDERED by the commission that the executive director is hereby authorized to accept the donation of the new land and that the executive director or the director's designee is authorized and directed to sign and execute a donation agreement with BAE, in accordance with Title 43, Texas Administrative Code, Chapter 1, Subchapter G.

FURTHER, in consideration of the foregoing premises and in accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission finds that the perpetual easement is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument granting the perpetual easement in exchange and as consideration for the conveyance to the state of the new land.

Note: Exhibit A on file with minute order clerk.

(6) Travis County - FM 685 at CR 138 - Consider the release of a surplus channel easement

110294
ROW

In the city of Pflugerville, TRAVIS COUNTY, on FARM TO MARKET ROAD 685, the State of Texas (state) acquired certain land needed for highway drainage purposes by instrument recorded in Volume 1348, Page 275, Deed Records of Travis County, Texas.

A portion of the land (surplus easement), described in Exhibit A, is no longer needed for a state highway purpose.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the sale of a surplus easement to the underlying fee owner.

Steve Durhman, Trustee, is the underlying fee owner and has requested that the surplus easement be sold to him for \$2,250.

The commission finds \$2,250 to be a fair and reasonable value for the state's rights and interest in the surplus easement.

NOW, THEREFORE, the commission finds that the surplus easement is no longer needed for a state highway purpose and that the value of the surplus easement is less than \$10,000 and authorizes the executive director to execute a proper instrument conveying the state's rights and interest in the surplus easement to Steve Durhman, Trustee, for \$2,250.

Note: Exhibit A on file with minute order clerk.

f. Speed Zones

Various Counties - Establish or alter regulatory and construction speed zones on various sections of highways in the state

110295
TRF

Transportation Code, §545.352 establishes prima facie reasonable and prudent speed limits for various categories of public roads, streets and highways.

Transportation Code, §545.353 empowers the Texas Transportation Commission (commission) to alter those prima facie limits on any part of the state highway system as determined from the results of an engineering and traffic investigation conducted according to the procedures adopted by the commission.

The Texas Department of Transportation (department) has conducted the prescribed engineering and traffic investigations to determine reasonable and safe prima facie maximum speed limits for those segments of the state highway system shown in Exhibits A and B.

Exhibit A lists construction speed zones in effect when signs are displayed within construction projects. The completion and/or acceptance of each project shall cancel the provision of this minute order applying to said project and any remaining construction speed zone signs shall be removed.

Exhibit B lists speed zones for sections of highways where engineering and traffic investigations justify the need to alter the speeds.

It has also been determined that speed limits on various segments of the state highway system, previously established by the commission by minute order and listed in Exhibit C, are no longer necessary or have been incorporated by cities which have the authority to set speed limits on these sections of highways.

IT IS THEREFORE ORDERED by the commission that the reasonable and safe prima facie maximum speed limits determined in accordance with the department's "Procedures for Establishing Speed Zones" and shown on the attached Exhibits A and B are declared as tabulated in those exhibits. The executive director is directed to implement this order for control and enforcement purposes by the erection of appropriate signs showing the prima facie maximum speed limits.

IT IS FURTHER ORDERED that a provision of any prior order by the commission which is in conflict with a provision of this order is superseded to the extent of that conflict, and that the portions of minute orders establishing the speed zones shown on the attached Exhibit C are canceled.

Note: Exhibits A through C on file with minute order clerk.

ITEM 12. Executive Session Pursuant to Government Code, Chapter 551

- a. **Section 551.071** - Consultation with and advice from legal counsel
- b. **Section 551.072** - Discussion of real property purchase, exchange, lease, donations
- c. **Section 551.074** - Discuss the evaluation, designation, reassignment, and duties of department personnel, including district engineers, division directors, and office directors.

The commission did not meet in executive session.

OPEN COMMENT PERIOD - The commission did not receive any comments.

Commissioner Houghton made a motion, seconded by Commissioner Andrade and the commissioners approved adjourning the meeting.

The regular meeting of the Texas Transportation Commission adjourned at 1:48 p.m.

APPROVED:

Ric Williamson, Chair
Texas Transportation Commission

xxx

I hereby certify that the above and foregoing pages constitute the full, true and correct record of all proceedings and official records of the Texas Transportation Commission at its regular meeting on October 27, 2005, in Corpus Christi, Texas.

Dee Hernandez, Chief Minute Clerk
Texas Department of Transportation